

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-12 and 14-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reimers (3,305,447) alone or if necessary in view of Shukla (4,640,717) for the reasons of record.

Applicant argues that the concentration of the corn syrup solution in Reimers is different from that of the claims. This has been considered but is not persuasive. Example 1 shows that the sugary syrup starts at 74 Brix (column 5, line 50). One of ordinary skill in the art would expect the syrup to contain 74% solids. Reimers further concentrates his sugar syrup with heat and with the addition of granular sugar so one of ordinary skill in the art would expect the solids content of the syrup to increase during the process. The selection of sugar syrup with different solids content is not seen to constitute unobviousness, particularly when the overall process is to prepare a dried sugar composition. Applicant argues that the particle size in Reimers is different than that of the claims. This has been considered but is not persuasive. Reimers pulverizes his dried product to a

particular screen size. If one of ordinary skill in the art desired a different particle size of sugar, it would have been obvious to adjust the extent of pulverization to achieve the desired particle size. Reimers, in particular, teaches sizing the sugar product at column 5, lines 62-65. Change in size and shape of a sugar particle is not seen to constitute unobviousness.

Applicant argues that his product has poor flow properties. This is disagreed with as note column 6, lines 11-12.

Applicant argues that Reimers requires additional processing steps of compacting to increase the particle size of the sugar. This has been considered but is not persuasive. The claims are open to the inclusion of additional steps. Applicant argues that Reimers does not use a twin screw extruder. Bit twin screw extruders are known in the art as shown by Shukla. Applicant argues that there is no reason to combine Reimers with Shukla. This is disagreed with. Both Reimers and Shukla are directed to processing sugar products. No unobvious or unexpected result is seen from using one mixing apparatus over the other in the processing of sugar syrup. Apparatus limitations do not carry any weight in process claims. Applicant argues that Shukla is silent as to sugar particle size but sugar is well known in the art to be prepared in granular form. To prepare sugar

with a different particle size is seen to be an obvious matter of choice with regard to the type of sugar desired.

The rejection of the claims under 35 USC 112 first paragraph has been withdrawn for the reasons argued by applicant.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794